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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

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14 UNITED STATES OF AMERICA,) CASE NO. 2:05-CR-022 FCD
15 Plaintiff,)
16 v.) STIPULATION AND ORDER REGARDING
17 ADRIAN LAMO,) THE DEFENDANT'S SUBMISSION OF
18 Defendant.) DNA SAMPLES
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22 The United States, by and through Assistant United States
23 Attorney Heiko P. Coppola, and the defendant, by and through his
24 counsel, Assistant Federal Defender Mary French, enter into the
25 following stipulation regarding the defendant's submission of
DNA samples:

26 1. A convicted felon such as the defendant, Adrian Lamo, is
27 required to submit to DNA testing. The collection method
currently used by the Federal Bureau of Investigation (FBI)
involves taking a blood sample.

28 2. Mr. Lamo asserts that pursuant to his sincerely held
religious beliefs, he is not able to provide a blood sample.

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1 3. In a recent case before Chief Judge David F. Levi,
2 namely United States v. Elden Leroy Holmes, Case No. 2:02-CR-0349
3 DFL, the Court addressed the issue of taking a DNA sample from an
4 individual with a sincerely held religious belief against the
5 drawing of blood. In that case, Judge Levi found that the
6 government's requirement that the defendant submit his DNA sample
7 through a blood sample imposed a substantial burden on his free
8 exercise of religion in violation of the Religious Freedom
9 Restoration Act ("RFRA"), 42 U.S.C. §§ 14132bb, et seq.

10 4. In light of Judge Levi's finding in United States v.
11 Elden Leroy Holmes, the undersigned prosecutor is not convinced
12 that the government can demonstrate a compelling interest in
13 collecting DNA through a blood sample rather than by a buccal
14 sample, in the face of defendant Lamo's assertion of a sincerely
15 held religious belief against taking a blood sample. The
16 government and the defendant agree that for the purpose of
17 resolving this case, buccal samples will be collected from Mr.
18 Lamo in lieu of providing a blood sample.

19 5. Accordingly, the parties seek an order requiring Mr. Lamo
20 to submit to buccal sample collection within 30 days - on a date
21 to be arranged through his counsel, the prosecutor and the
22 probation officer - by reporting to the United States Probation
23 Office in Sacramento, where eight (8) buccal swabs will be
24 collected from Mr. Lamo by an authorized representative of the
25 FBI, who will take custody of the swabs and make arrangements to
26 have them transported to the FBI laboratory or its authorized
27 representative. The eight samples will be taken to ensure that
28 enough DNA material is collected to effectuate analysis and

storage of the DNA sample and to obviate the need to keep the violation petition open while the analysis and uploading to CODIS takes place - a process that will not happen immediately.

6. Additionally, the prosecutor will report to the Court, within five court days of Mr. Lamo's submission of the samples, that he has done so. The prosecutor shall simultaneously submit a proposed order for dismissal of the violation petition.

So stipulated.

DATED: June 19, 2007

McGREGOR W. SCOTT
United States Attorney

By /s/ Heiko P. Coppola
Heiko P. Coppola
Assistant U.S. Attorney

DATED: June 19, 2007

DANIEL A. BRODERICK
Federal Defender

By /s/ Mary French
Mary French
Assistant Federal Defender
Counsel for Defendant
Signed per email authority by
Heiko P. Coppola

ORDER

Mr. Lamo is ordered to submit to buccal sample collection by reporting, within 30 days of the issuance of this order - on a date to be arranged through his counsel, the prosecutor, and the probation officer - to the United States Probation Office in Sacramento, where eight (8) buccal samples will be collected from Mr. Lamo by an authorized representative of the FBI, who will take custody of the samples and make arrangements to have them

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1 transported to the FBI laboratory or its authorized
2 representative.

3 The prosecutor is directed to report to the Court, within
4 five court days of Mr. Lamo's submission of the samples, that he
5 has done so. The prosecutor shall simultaneously submit a
6 proposed order for dismissal of the violation petition.

7 The status conference set for June 25, 2007 is VACATED and
8 RESET for Monday, July 30, 2007 at 10:00 a.m. If the dismissal
9 of the petition is received prior to the status is will be
10 vacated.

11 IT IS SO ORDERED.

12 DATED: June 21, 2007



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14 FRANK C. DAMRELL, JR.
15 UNITED STATES DISTRICT JUDGE
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